PENDAFTAR PERTUBUHAN MALAYSIA

v.

PV DAS;
DATUK M KAYVEAS (INTERVENER)

COURT OF APPEAL, KUALA LUMPUR
ABDUL HAMID MOHAMAD JCA
ABDUL KADIR SULAIMAN JCA
RICHARD MALANJUM JCA
[CIVIL APPEAL NO: N-01-98-1999]
19 JUNE 2003

UNINCORPORATED ASSOCIATIONS: *Societies - Political party - Appeal by Registrar of Societies - Trial judge allowed plaintiff's application declaring unlawful registrar's recognition of party leader and supporters - Whether decisions of political party amenable to judicial review - Whether s. 18C Societies Act 1966 ousts judicial review*

This was an appeal by the Registrar of Societies against the decision of the learned judge of the High Court. The learned judge had allowed the plaintiff's application, *inter alia*, to invalidate the registrar's recognition of the appointment of one Datuk M Kayveas and his supporters as president and office-bearers respectively of a political party ('PPP').

The main issue was whether the decisions of PPP were subject to judicial review in view of s. 18C of the Societies Act 1966.

Held:
Per Abdul Hamid Mohamad JCA

[1] Effect must be given to the intention of Parliament in legislating s. 18C of the Societies Act 1966. In s. 18C, Parliament did not stop at the words "shall be final and conclusive and ... shall not be challenged, appealed against, reviewed, quashed or called in question in any court". It went further to provide "… on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision". These words clearly show that Parliament intended to exclude the jurisdiction of the courts. Also, the dispute regarding the validity of the Extra Ordinary Delegates

Conference, the election of Datuk M Kayveas and his supporters as President and Office Bearers respectively, the validity of the voting done and the resolutions passed etc, were decisions of a political party on any matter relating to the affairs of the party within s. 18C. (p 413 c-g)

[Appeal allowed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Ini adalah rayuan Pendaftar Pertubuhan Malaysia terhadap keputusan hakim bijaksana Mahkamah Tinggi. Hakim bijaksana telah membenarkan permohonan plaintif mentaksahkan pengiktirafan Pendaftar terhadap perlantikan seorang Datuk M Kayveas dan penyokong-penyokong beliau sebagai presiden dan pegawai-pegawai jawatan masing-masing sebuah parti politik PPP.

Isu utama adalah sama ada keputusan yang dibuat oleh PPP boleh dikaji semula oleh mahkamah memandangkan s. 18C Akta Pertubuhan 1966.

Diputuskan:
Oleh Abdul Hamid Mohamad JCA

[1] Kepentingan mesti diberikan kepada tujuan Parlimen memperbuat s. 18C Akta Pertubuhan 1966. Parlimen tidak berhenti dengan perkataan-perkataan bahawa keputusan sebuah parti politik itu 'akhir dan muktamad dan tidak boleh dicabar, dirayukan, dikaji semula, dibatalkan atau dipersoalkan dalam mana-mana mahkamah'. Malah Parlimen meneruskan dengan perkataan-perkataan 'atas apa-apa alasan dan mahkamah tidak mempunyai bidang kuasa untuk melayan atau menentukan mana-mana guaman, permohonan, persoalan atau prosiding atas apa-apa alasan berhubung kesahihan keputusan itu'. Perkataan-perkataan tersebut jelas menunjukkan bahawa Parlimen bertujuan untuk menyingkirkan bidang kuasa mahkamah. Juga, pertikaian dalam kes semasa berkenaan keesahan Mesyuarat Extraordinary Delegates, perlantikan Datuk M Kayveas dan penyokong-penyokongnya sebagai Presiden dan pegawai-pegawai jawatan masing-masing, keesahan pengundian dan resolusi-resolusi yang diluluskan etc, merupakan keputusan-keputusan sebuah parti politik berhubung urusan parti itu di dalam lingkungan s. 18C.

Rayuan dibenarkan.]

Case(s) referred to:

Abdul Aziz Jamal Mohammad & Ors v. Maniam KVS [1998] 2 CLJ Supp 1 HC ***(refd)***

Anisminic Ltd v. Foreign Compensation Commission [1969] 2 AC 147 ***(refd)***

Ismail Mohd & Satu Lagi lwn. Zainal Abidin Mohamad Hashim & Yang Lain [1994] 2 CLJ 201 HC ***(refd)***

Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1997] 1 CLJ 636 FC ***(refd)***

PP v. Ottavio Quattrocchi [2003] 2 CLJ 613 CA ***(refd)***

PV Das v. Maniam KVS Kayveas [1997] 5 CLJ 529 HC ***(refd)***

SI Rajah & Anor v. Dato' Mak Hon Kam & Ors [1994] 1 CLJ 215 HC ***(refd)***

Tengku Razaleigh Tengku Mohd Hamzah v. Election Judge for Election Petition No: 33-6-1995 & Ors [1996] 1 CLJ 366 HC ***(refd)***

Wee Choo Keong v. Lee Chong Meng [1998] 1 CLJ 705 FC ***(refd)***

Yong Teck Lee v. Harris Mohd Salleh & Anor [2002] 3 CLJ 422 CA ***(refd)***

Legislation referred to:

Election Offences Act 1954, ss. 33(4), 41

Extradition Act 1992, s. 37(6)

Industrial Relations Act 1967, ss. 33A, 33B, 33C

Societies Act 1966, s. 18C

For the appellant - Amarjeet Singh (Mat Ghani Abdullah); AG's Chambers

For the respondent - Maniam K Marappan (Sila Dass & Vijaya); M/s Maniam K Marappan & Co

For the intervener - Sri Dev Nair (PC Low); M/s Blanche & Kayveas

Reported by Usha Thiagarajah

JUDGMENT

Abdul Hamid Mohamad JCA:

This and the other appeal (Civil Appeal No. N-02-661-96) were fixed for hearing before us on 27 January 2003. When Civil Appeal No. N-02-661-96 was called the court was shown a notice of discontinuance filed by the appellant in that appeal (PV Das, who is the respondent in the present appeal). However, PV Das, while admitting that he signed and filed the notice, disputed it but his grounds were not clear to us. We struck out that appeal and had given a separate grounds of judgment.

When this appeal was called, Mr. Amarjeet Singh, the Federal Counsel appearing for the appellant (Registrar of Societies) informed the court that the respondent had given a notice dated 23 January 2003 informing the court that he had discharged his solicitors and wanted to appear in person.

We were then shown a "Notis Perlantikan Peguamcara" dated 27 January 2003 that Tetuan Rugber Singh & Partners had been appointed to act as counsel for the respondent in the appeal. But it was Mr. Maniam K. Marappan & Company who appeared as counsel for the respondent even though eventually it was Mr. KS Dass who argued the case for the respondent.

We made no issue out of that as we were of the view that the respondent could change his mind whether to represent himself or to appoint any advocate and solicitor to represent him.

Then, Mr. Dev Nair, learned counsel for the intervener (Datuk M. Kayveas) showed us a letter addressed to the Registrar of the Court of Appeal, signed by the respondent (PV Das), para. 2 of which reads:

> 2. This is to inform you that I have no intention of contesting the abovesaid Appeal and I have no objection in the aforesaid Appeal being allowed provided with no costs against me. I also agree that the deposit to be paid back to the respective Appellant and Intervener.

But, that was only in respect of the intervener. The appeal by the appellant (Registrar of Societies) remains. We decided to hear the appeal. At the conclusion of the hearing, on 29 January 2003, we allowed the appeal with costs.

Considering the reason for our allowing the appeal, we do not think it is necessary to narrate in detail the facts and the chronology of the proceedings which is rather lengthy and complicated.

We shall however, state the necessary facts to enable our judgment to be understood. There are other related suits. But, we shall confine ourselves to the suit which leads to this appeal.

In this suit PV Das suing on behalf of himself and also purportedly on behalf of the People's Progressive Party (PPP), sues the Registrar of Societies, praying for declarations:

(1) that the Defendant's recognition of Kayveas as President of PPP and those who support him as office-bearers, is unlawful and *ultra vires* the Societies Act and the PPP's Constitution;

(2) that the Plaintiff and the office-bearers elected at the Triannual Delegates Conference held on 13.8.95 are the lawful President and office-bearers of PPP;

(3) that all approvals given by the Defendant to Kayveas and his supporters regarding the change of address of the Headquarters of PPP, the formation of branches, the change of logo, the change of name of the Party in Bahasa Malaysia and the amendment of the Party's Constitution are all illegal, *ultra vires* the Societies Act and the PPP's constitution; and

(4) the Headquarters of the registered office be at No. 15, 1st Floor, Persiaran Syed Putra, 50460 Kuala Lumpur,

including damages and costs.

The learned judge allowed prayer (1) ie, that the defendants' recognition of Datuk M. Kayveas as President of the PPP and his supporters as office-bearers is unlawful and *ultra vires* the Societies Act 1966 and the PPP's Constitution.

The learned judge allowed this prayer on the ground that the default order of the registrar dated 31 May 1994, relied on by the appellant to give recognition to Datuk M. Kayveas and his supporters had been set aside by the judge in chambers on 28 February 1996.

The learned judge also allowed prayer (3) ie, approval given by the registrar to Datuk M. Kayveas regarding the change of address of the Headquarters of PPP, formation of branches, change of logo etc. was illegal, *ultra vires* the Act and the party's Constitution. This is on the ground the Extraordinary Delegates Conference held on 10 October 1993 which passed resolutions for those changes was null and void because non-members were present and voting.

The learned judge also ordered that damages be assessed and granted costs to the respondent.

The appellant appealed to this court by a notice of appeal dated 11 October 1999. On 14 October 1999 this court allowed Datuk M. Kayveas's application to intervene in the appeal and stayed the order of the High Court dated 18 September 1999, the subject matter of this appeal.

Section 18C Societies Act 1966

That section was inserted by Act A743 and came into force on 12 January 1990. It provides:

18C. The decision of a political party or any person authorized by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any

court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.

The first thing to be observed is that this section applies only to political parties. Secondly the words used are more exhaustive than those used in other similar provisions. For examples, in s. 33(4) of Election Offences Act 1954 the words "shall be final" are used. In s. 41 of the same Act the words "shall not be questioned" are used. In s. 37(6) of the Extradition Act 1992 the words "shall be final and conclusive" are used. However, in s. 33B of the Industrial Relations Act 1967 the words "shall be final and conclusive and shall not be challenged, appeal against, reviewed, quashed or called in question in any court" are used. This section was inserted by Act A484 and came into force on 30 May 1980.

The view taken by the courts in this country on the meaning of those phrases vary from statute to statute. In election petition cases, even though only words "shall be final" are used, the courts in this country have consistently held that a decision of an Election Judge in an election petition is not appealable. For the latest decision of this court see *Yong Teck Lee v. Harris Mohd. Salleh & Anor.* [2002] 3 CLJ 422. The application for leave to appeal had been refused by the Federal Court in O.M. No. 08-46-2002 (S). The courts have also consistently held that the decisions of an election judge is not subject to judicial review, but, in all fairness, it must be pointed out, on the ground that an election judge is not an inferior tribunal to the High Court – see *Wee Choo Keong v. Lee Chong Meng* [1998] 1 CLJ 705 (FC), *Tengku Razaleigh bin Tengku Mohd. Hamzah v. Election Judge for Election Petition No. 33-6-1995 and Ors.* [1996] 1 CLJ 366 and also *Yong Teck Lee (supra)*.

Regarding the provision of s. 37(6) of the Extradition Act 1992 where words "shall be final and conclusive" are used, this court recently, *PP v. Ottavio Quattrocchi* [2003] 2 CLJ 613 had held that the decision of the High Court was not appealable to this court.

However, it is trite law that, in spite of the quite exhaustive words used in s. 33B of the Industrial Relations Act 1967, awards of the Industrial Court are subject to an order of *certiorari*. Admittedly, it is a very strong argument to say that s. 18C of the Societies Act 1966 should be similarly interpreted.

However, let us look at the attitude of the courts in the interpretation of s. 18C. Unfortunately, as far as we can ascertain, there has not been a decision of a court higher than the High Court on that section.

In *S.I. Rajah & Anor v. Dato' Mak Hon Kam & Ors.* [1994] 1 CLJ 215, a case involving the same political party and in fact related to this case Lim Beng Choon J had this to say:

> Finally I should also mention that an amendment *vide* Act 743/90 was made to the Societies Act 1966 by introducing Pt IA entitled 'Provisions applicable to political parties only' and the amendment came into force on 12 January 1990. The amendment has the effect of confining disputes arising from the election of disqualified persons as office bearers of a political society within the said party itself. In short, it is for the political party itself to settle such disputes. Although the amendment was made after the institution of this action and is not applicable to this action as it has not been made retrospectively, nonetheless the amendment acknowledges the common sense rule adopted by the court even before the amendment was made, ie, that the remedy of a politician involved in a dispute with his fellow member of his party lies not with the court but with the Registrar of Societies or the electorate of his party.

In *Ismail bin Mohd. & 1 Lagi lwn. Zainal Abidin bin Mohamad Hashim & 3 Lagi* [1994] 2 CLJ 201, the learned counsel for the defendant chose to argue his case on the basis that the court had the jurisdiction even in respect of matters enumerated in s. 18C if the decision was made without jurisdiction or was a nullity. He conceded that the principles laid down in *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 2 AC 147 (HL) which had been adopted by the courts in this country was applicable in interpreting s. 18C.

Consequently, this is what I said in that case:

> Memandangkan bahawa peguam defendan-defendan sendiri memilih untuk menghujahkan kesnya atas asas bahawa prinsip yang dinyatakan dalam kes *Anisminic* itu terpakai dalam tafsiran peruntukan s. 18C itu, maka tidaklah perlu bagi saya, dalam memutuskan kes ini, menimbangkan dan memutuskan sama ada s. 18C itu mengeluarkan bidangkuasa Mahkamah sepenuhnya atau tidak. Walau bagaimanapun soalan itu nampaknya masih terbuka, memandangkan, terutama sekali, bahawa perkataan-perkataan yang digunakan oleh Parlimen dalam akta-akta berkenaan yang ditafsirkan dalam kes-kes yang saya sebut di atas itu adalah berlainan daripada perkataan-perkataan yang digunakan dalam s. 18C itu. Saya tidak patut berkata lebih banyak berkenaan soalan itu dalam kes ini.
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> Soal yang perlu diputuskan ialah sama ada, berdasarkan fakta-fakta kes ini, peruntukan s. 18C itu, mengambil kira prinsip yang disebut dalam kes *Anisminic* itu, mengeluarkan guaman ini daripada bidangkuasa Mahkamah ini.

After considering the facts of the case I concluded:

> Kesimpulannya saya berpuashati bahawa BPUPP diberi kuasa oleh UMNO (parti) membuat keputusan yang dicabar itu; bahawa BPUPP telah membuat keputusan itu di dalam bidangkuasanya dan keputusan itu bukanlah satu "nullity"; bahawa keputusan itu adalah berhubung dengan hal-ehwal parti. Oleh itu s. 18C itu terpakai kepada kes ini. Justru itu keputusan itu tidak boleh "dicabar, ... dikaji semula, dibatalkan atau dipersoalkan di mana-mana mahkamah ... dan tiada mahkamah mempunyai bidangkuasa untuk melayani atau memutuskan apa-apa guaman, permohonan, soal atau prosiding ... berkenaan dengan keesahan itu.

However, I did make this observation on s. 18C:

> Sebelum membincang peruntukan ini eloklah disebut bahawa mengikut Perkara 121, Perlembagaan Persekutuan, Mahkamah Tinggi mempunyai bidangkuasa seperti mana yang diberi oleh atau di bawah undang-undang persekutuan. Akta Pertubuhan 1966 adalah satu undang-undang persekutuan. Akta itu boleh memberi, menambah, mengurangkan atau meniadakan bidangkuasa mahkamah dalam sesuatu perkara.

In *PV Das v. Maniam KVS Kayveas* [1997] 5 CLJ 529, another related case, the same learned judge who decided the present case had this to say on s. 18C:

> It is observed that the Court has no jurisdiction to entertain an application which questions the decision of a political party or its office-bearers relating to the affairs of the party. The facts disclosed that the Plaintiff was unanimously elected as President of PPP at the Triennial Delegates Conference on 13.8.95 at Segamat attended by 215 representatives from 95 out of 110 Branches of the party. The Defendant's Presidency was approved and endorsed at the Extraordinary Delegates Conference on 10.10.93 attended by 310 members and 98 delegates from 84 Branches of the Party. It was manifest that both Presidents enjoyed popular votes. It is my humble view that under the circumstance the election of the Plaintiff as President of PPP and the approval and endorsement of the Defendant's Presidency of the PPP are the decisions of a political party within the meaning of section 18C of the Act and I hold further that the business of electing the President or the approval and endorsement of the President are "matters relating to the affairs of the party". Therefore I hold that such decisions on such matters are final and conclusive decisions and the Court has no jurisdiction to question the validity of such decisions.

In *Abdul Aziz bin Jamal Mohammad & Ors v. Maniam KVS @ M. Kayveas* [1998] 2 CLJ Supp 1, also a related case, Suriyadi J said, having considered, *inter alia*, the judgment of Mohd. Noor Abdullah J in Civil Suit No. 22-72-96 referred to earlier and the judgment of Raus J in High Court Muar, Civil Suit No. 22-21-97, concluded:

> With all these convincing arguments either posed by the defendants or interpreted by the court, and after a perusal of the relevant provisions, I had to conclude that that provision was very clear and unambiguous and brooked no other interpretation. I was also unable to acquiesce to the suggestion of the plaintiffs that invalid decisions do not come within the purview of s. 18C whilst good ones were.

In his judgment, the learned judge also quoted Raus J's unreported judgment in Civil Suit No. 22-21-97:

> Seksyen 18C Akta Pertubuhan 1966 dengan jelas memperuntukkan bahawa keputusan yang dibuat oleh sesuatu parti politik itu adalah muktamad, dan keputusan itu tidak boleh dicabar, dirayukan, dikaji semula, dibatalkan atau dipersoalkan dalam mana-mana mahkamah atau atas apa-apa alasan dan mahkamah tidak mempunyai bidang kuasa untuk melayan atau apa-apa alasan berhubung kesahihan keputusan itu.

It is also important to note that Suriyadi J, in his judgment placed on record:

> As we went along with the hearing, the defendants revealed that one of the decision of Mohd. Noor Abdullah J had been dealt with by the Court of Appeal, a quorum which comprised Siti Norma Yaakob, Gopal Sri Ram and Ahmad Fairuz JJCA. In that decision, the Court of Appeal also held the same view as that of the High Court judge. It was unfortunate that the defendants could not supply me with the relevant written decision.

So, at least five High Court judges had expressed the same view on s. 18C and there is no dissenting view.

We are also of the same view that effect must be given to the intention of Parliament in legislating s. 18C. We would, in this respect, repeat the words of Gopal Sri Ram JCA in *Krishnadas a/1 Achutan Nair & Ors v. Maniyam a/l Samykano* [1997] 1 CLJ 636, also quoted by Suriyadi J in *Abdul Aziz bin Jamal Mohamad (supra)*:

> The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases.

To the argument that s. 18C should be given similar interpretation as s. 33B of the Industrial Relations Act 1967 we would like to point out that prior to 30 May 1980, there were no provisions similar to ss. 33A and 33B. With the "development" of administrative law taking place in this country during that period, Parliament thought it fit to insert ss. 33A and 33B in the Act. There is no doubt that the intention was to curtail if not to prevent the courts in the exercise of its power of judicial review in such cases. But, the current was too strong to be stopped, or even slowed down. That provision became a dead letter. The courts continued and even expanded the grounds for their interference. Whether we like it or not, that is now the law and we accept it.

Ten years later, Parliament found it necessary to legislate s. 18C. Having learnt from the experience regarding the ineffectiveness of the wording used in s. 33C, Parliament had come up with a new formula. It did not stop at the words "shall be final and conclusive and ... shall not be challenged, appealed against, reviewed, quashed or called in question in any court." It went further to provide "... on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision."

Are these words still not clear or insufficient to say what the legislature wants to say? If these words are still ambiguous or insufficient to show the intention of Parliament, we do not know what else can be said to achieve its intention.

We shall now consider the provision of s. 18C in the light of this case. The suit is against the Registrar of Societies. The first prayer concerns the act of the registrar in recognizing Datuk M. Kayveas as President and his supporters as office-bearers of the party. The second prayer seeks a declaration by the court that the plaintiff and his supporters are the President and office-bearers of the party, respectively. The third prayer seeks a declaration that the approval by the registrar of the change of address etc. are void. The fourth prayer is for a declaration regarding the address of the headquarters of the party. This is followed by prayers for damages and costs. All these arise from the dispute regarding the validity of the Extra Ordinary Delegates Conference, the election of Datuk M. Kayveas and his supporters as President and office-bearers respectively, the validity of the voting done and the resolutions passed and also who are members and who are not. These in our views are "decision(s) of a political party on any matter relating to the affairs of the party ...".

It may be argued that, at least in respect of the first and the third prayers, what are being challenged are the acts of the registrar and not the decisions of the party. But, to take that view would mean that whereas a decision of a political partner cannot be challenged in court but, when recognition is given to the decision by the registrar, it may be challenged in court, and all the issues may be reopened for decision by the court. That would defeat the whole purpose of s. 18C.

In the circumstances we are of the view that the suit is a non-starter and the appeal should be allowed on this ground alone. We do not think it is necessary for us to decide on other grounds. We also ordered the respondent to pay costs of the appellant in this appeal and in the court below.

Indeed, on a hindsight, in view of the consent judgment entered in respect of the intervener, we do not think we could have come to a different conclusion. By the consent judgment the respondent, in effect, admits as valid the very same things he still disputes, as against the Registrar of Societies. Certainly, that is not tenable.